MAMELO MOYO

And

MELUSI MOYO

Versus

THE STATE

IN THE HIGH COURT OF ZIMBABWE
TAKUVA & MOYO JJ
BULAWAYO 2 MARCH 2021 & 4 NOVEMBER 2021

Criminal Appeal

T. Tavengwa for the appellants
Miss Ndlovu for the respondent

TAKUVA J: This is an appeal against conviction. After hearing counsel we delivered an *ex tempore* judgment dismissing the appeal. Subsequently counsel for the appellants requested for the full reasons for the dismissal of the appeal.

These are they:

Background

The appellants who are husband and wife were employed by Midlands State University at the material time. The 1st appellant was employed as a Bursar while the second was employed as an Acting Director of Works and Estates. During the period 11 September 2014 and 25 September 2015 the appellants concluded business transactions (through Netabelt Investments a company in which 2nd appellant and appellants' son are directors) with the respondent. The appellants did not declare their conflict of interest to the respondent.

Both appellants were charged with "corruptly concealing from a principal a personal interest in a transaction as defined in section 193 (1) (a) (i) of the Criminal Procedure (Codification and Reform) Act, (Chapter 9:23) (24 counts). In that during the period extending from 11 September 2014 to 1 October 2015 and at Midlands State University, Gweru. Mamelo Moyo and Melusi Moyo or one or both of them being public officers, unlawfully carried out transactions in

connection with their principal's affairs or business without disclosing to the principal that they held a personal interest in the subject matter of the transactions intending to deceive the principal or realizing that there is a real risk or possibility that the principal may be deceived. That is to say Mamelo Moyo arranged the purchase of stationary worth US$154 393,05 as indicated on the annexure to the charge sheet on behalf of the principal from a company named Netabelt Investments (Pvt) Ltd without disclosing to their principal that Melusi Moyo who is Mamelo Moyo's husband was a director of Netabelt Investments (Pvt) Ltd alongside Tawanda Lovejoy Moyo who is Mamelo Moyo's son".

The background facts as outlined in the outline of the state case are as follows:

"1. …
2. …
3. …
4. …
5. …
6. During the period 11 September 2014 to 25 September 2015. Accused 2 made supplies to Midlands State University, via Netabelt Investments (Pvt) Ltd, through a tender process as well as the Competitive Quotation Bidding process without having declared his conflict of interest to Midlands State University in contravention of Midlands State University financial regulations.
7. Accused 1 authorised payments for 14 of the 19 transactions which were made to Netabelt Investments via bank transfers into Netabelt's CBZ bank account number 0182396840015.
8. Sometime in 2015 the complainant received information to the effect that accused one had not declared a personal interest in respect of Netabelt Investments which is owned by accused 2 and her son.
9. The complainant then invited Deloite and Touche Chartered Accountants to conduct a forensic review.
10. Investigations established that during the month of September 2015 accused one approached Fidelis Fortune Mazwi and Jonathan Satande to help accused one conceal her non-disclosure of her personal interest in a transaction from, a principal by having Fidelis Fortune Mazwi and Jonathan Satande sign declaration registers for conflict of interest forms in retrospect as witnesses and receiver respectively for accused one and two.
11. The State can produce the forensic reports, forged declaration register of conflict of interest forms, CR14 form (particulars of

directorship in respect of Netabelt Investments), business transactions conducted between Netabelt Investments and the complainant over the period 11 September 2014 to 25 September 2015 to the tune of US$154 393,05, Midlands State University (MSU) financial regulations and University minutes as exhibits.

12. The accused persons acted wrongfully."

Both appellants pleaded not guilty and through her lawyer filed a defence outline in which they contended that the charges were trumped up by the Council's Chairman in cahoots with Mazwi and Jonathan Satande and others". The 2nd appellant specifically averred that he disclosed his personal interest in Netabelt to the employer (MSU) in various ways including the handover of company documents to the procurement office. These documents include the CR14 and CR6 which bear his personal particulars including his name, identity numbers and address". He further alleged that he" filed in the conflict of interest document form thereby declaring his interest.

The two appellants challenged the audit report as unsuitable as it was not meant for any other purposes other than "use by the MSU for its own purposes". In any event they contended that the forensic auditors "confirmed in their report that there had been compliance with the law despite pressure from their client to find otherwise". The 1st appellant stated that at all material times, she did not personally engage herself in the tender processes where Netabelt Investments was involved in line with her declaration of interests as a signatory to the Netabelt account. In any event when it came "to payment the Deputy Bursar Accounting and Finance would pass transaction for payment after ensuring that goods had been received and all relevant documents were in place".

Finally, both appellants said the y failed to comprehend how their employer was deceived or prejudiced in the circumstances, since the goods were "delivered in good order and duly paid for".

Despite their pleas of not guilty they were both convicted and sentenced as follows:

"All 24 counts as one for sentence: Each accused is fined $4 000,00 or in default of payment 2 years imprisonment. In addition 3 years imprisonment wholly suspended on condition accused is not within that period convicted of the offence of "corruptly concealing from a principal a

personal interest" for which upon conviction the accused shall be sentenced to imprisonment without the option of a fine".

Dissatisfied, both appellants appealed against conviction only. The grounds of appeal neither concise nor precise. To demonstrate this I hereunder reproduce them verbatim.

"1. The court *a quo* erred and misdirected itself at law in failing to appreciate that the State was required to place evidence before the court proving beyond reasonable doubt that the appellant had per each count unlawfully, intentionally and corruptly concealed a personal interest in the twenty-four (24) counts intending to deceive the principal that is the court *a quo* failed to appreciate that there was no evidence before it proving each of the counts before it individually.
2. The court *a quo* erred at law in failing to appreciate that corruption is an essential element of the offence and that the State had not placed any evidence of corruption before it.
3. The court *a quo* erred and misdirected itself at law in finding that essential elements of the crime charged had been established when in fact they had not, more specifically.
   (a) There was no evidence proving intention to deceive.
   (b) There was no evidence before the court proving that the appellant had "carried out the transaction as contemplated by the section and the learned magistrate failed to make the legal distinction between a juristic person and its actions and these (sic) of the appellants.
4. The court *a quo* erred and misdirected itself at law by placing a reverse onus on the appellants and by holding that the appellants had failed to discharge the reverse onus to disprove the allegations against them.
5. The court *a quo* erred and misdirected itself at law and in fact by making unfathomable credibility findings on the evidence of accomplice witnesses (Mazwi and Satande) who had a motive to exaggerate.
6. The court *a quo* erred and misdirected itself in fact and in law in finding that disclosure as contemplated by the section in question could only be effected in the manner specified by the principal's financial regulations and failed to consider that disclosure could be means *(sic)* of filing other declarations with the principal such as company documents detailing the appellant's personal details.

7. The court *a quo* erred and misdirected itself in fact by ignoring or failing to consider or failing to appreciate the following:
   (a) The appellants' acrimonious relationship with the Council Chairman.
   (b) Failure by the State to call the evidence of the Council Chairman in rebuttal of appellants' defence.
   (c) Failing to take into consideration the audit finding that there had been partial disclosure of the appellants' interest to the principal.
   (d) Failure to consider the audit finding that the practice of disclosure at the principal differed from that outlined in the principal's financial regulations.
   (e) By failure to consider that the appellants had not taken part in adjudication process in respect of all 24 transactions.
   (f) By failing to consider the audit findings that the awarding of the bids was at the recommendation of the Evaluation Team after a Price Evaluation of each transaction.
   (g) Failure to consider that the appellants had no hand in the awarding of the tenders, that the appellants distanced themselves from the bidding process, that none of the witnesses claimed to have been directed by the appellants to act in a certain corrupt manner and that all the goods had been supplied by the appellants.
8. The court *a quo* further erred and misdirected itself at law and in fact by totally disregarding and failing to consider the appellants' defence which remained uncontroverted at the end of the trial and by failing to determine the degree of disclosure required in terms of the law.
9. The court *a quo* erred and misdirected itself at law and in failing to appreciate applicable precedents placed before it by the appellant".

I must stat that all in all there are a whopping eighteen (18) grounds of appeal. Obviously there is a lot of repetition in most of these grounds. The appellants' heads of argument were filed by *Mr D. Mhiribidi.* This is the same legal practitioner who appeared for the appellants during the trial. He is the one who noted the appeal and filed the grounds of appeal. However on the date of the hearing, *Mr Tavengwa* appeared and argued the appeal. The reason for giving this back ground is that in the heads of argument appellants argued that the record of proceedings is not a true reflection of what actually transpired in court. A perusal of the record reveals a series of correspondence showing that the

appellants were challenging the accuracy or completeness of the record. The correspondence involved the magistrate who handled the matter culminating in an explanatory letter dated 12 October 2017 to the Registrar of this court. In that letter, the court *a quo* emphasized that all the parties signed a certificate of inspection and confirmation of the record of proceedings. The certificate is dated 20 August 2016 and attached as Annexure B. One Priviledge Mvundla signed the certificate for and on behalf of the appellants.

The court *a quo* also explained that "an attempt at transcribing the proceedings from the tapes was made, but in vain, as nothing could be heard from the 3 recorded tapes." It was never in doubt that the court a quo's position was that the record was not only complete but also accurate. Appellants' legal practitioners were aware of that fact on the date the appeal was argued.

Surprisingly, they did not seek to postpone the appeal so that this issue is resolved. Instead they argued the appeal on the merits. In such a scenario it will be improper for this court to quash the convictions on the grounds that the record is incomplete. In any event the record is not *prima facie* incomplete in that appellants for example cite the fact that the record does not show "the warning made by it to the accomplices to enable the appeal court to determine whether it was properly administered". However, in their closing submissions before the court *a quo, Mr Mhiribidi* conceded that the warning was administered but the witnesses' testimony did not satisfy the provisions of s267 of the Criminal Procedure and Evidence Act Chapter 9:07. His actual submission is that; "Both witnesses had been declared accomplice witnesses by the State and the court had exhorted them to tell the truth and nothing but the truth but it is submitted they both fell short of the requirements of section 267 and 268 of the Criminal Procedure & Evidence Act", see page 96 of the record. Despite quoting the two sections, he did not say in what way the two sections were violated.

All I can say is that in view of the above concession coupled with the certification of the record, the point regarding the inaccuracy of the record of proceedings is academic and is not being taken in good faith. I am therefore not going to be detained any further by such a moot point.

I now turn to the grounds of appeal as outlined in the notice of appeal. The 1st ground is to the effect that the State failed to prove beyond reasonable doubt that the appellants had "per each count" unlawfully, intentionally and corruptly concealed a personal interest in the twenty-four (24) counts intending to deceive

the principal. The contention is that there was no evidence placed before the court *a quo* that proved each of the counts before it individually. The emphasis is on the word "individually".

In view of the *modus operandi*, the identical nature of the offences, the facts that the evidence is identical, the fact that it was common cause that the appellants through Netabelt supplied the goods and were paid by the respondent and that the defence is collective, this ground of appeal is perfunctory and was meant to perplex the court. No wonder why it was never persuaded in the heads of argument. I find that it is totally devoid of merit and is hereby dismissed.

The second and third grounds are similar in that they address the same issue. I will deal with the factors raised in these two grounds at the same time. The 1st component is that the court failed to appreciate that corruption is an essential element of the offence. The second is that the State failed to place any evidence of corruption before the court. This ground exposes the serious misunderstanding if I may call it that of the legal practitioner of offences created under Chapter IX of the Criminal Law (Codification and Reform) Act. The Chapter is titled "Bribery and Corruption". Section 173 is titled "Corruptly concealing from a principal a personal interest in a transaction".

In my view an offence is not defined in the title but in the body of the section that creates that offence. *In casu* the offence creating section states;

> "173. Corruptly concealing from a principal a personal interest in a transaction
> (1) Any –
> (a) agent who carries out any transaction in connection with his or her principal's affairs or business without disclosing to the principal that he or she holds a personal interest in the subject matter of the transaction-
> (i) intending to deceive the principal or realizing that there is a real risk or possibility that the principal may be deceived; or
> (ii) intending to obtain a consideration knowing or realizing that there is a real risk or possibility that such consideration is not due to him or her in terms of any agreement or arrangement between himself or herself and the principal;
> or
> (b) …

(i) …
(ii) …

(2) …
(a) …
(b) …

(3) If it is proved, in any prosecution for the crime of corruptly concealing from a principal a personal interest in a transaction that,
(a) An agent –
(i) …
(ii) Failed to disclose to his or her principal a personal interest held by him or her in the subject matter of any transaction;
The agent shall be presumed, unless the contrary is proved, to have done so intending to deceive the principal or to obtain a consideration for himself or herself knowing or realizing that there is a real risk or possibility that such consideration is not due to him or her in terms of any agreement or arrangement between himself or herself and the principal, as the case may be;
(b) …
(c) …" (my emphasis)

What should be taken note of is that the charge *in casu* relates to contravening section 173 (1) (a) (i) of the Code. Accordingly, it is essential elements must be sought from the provisions of this section, subsection, paragraph and sub paragraph. Also relevant is the presumption introduced in sub paragraph (3) *supra*. In my view, the essential elements of this offence are;

1. One must be an "agent" as defined in section 169 of the Code.
2. The agent must carry out a transaction in connection with his or her principal's affairs or business.
3. Without disclosing to the principal that he holds a personal interest in the subject matter of the transaction;
4. Intention, that is intending to deceive the principal or realizing that there is a real risk or possibility that the principal may be deceived.

Evidently, the intention of the legislature is that once all these requisites are proven, the person shall be found guilty of corruptly concealing from a principal a personal interest in a transaction. Corruption is a generic term which does not have fixed elements like rape or murder. Corruption basically means dishonest or illegal behavior especially of people in authority. The Oxford

Advanced Learners Dictionary Seventh Edition defines the word "corrupt" as "(of people) willing to use their power to do dishonest or illegal things in return for money or to get an advantage …" (my underlining). From this definition, it is apparent that the term "corrupt" relates to a wide range of conduct or behavior. In that regard it is an elastic term consisting of many things. The word "corruptly" is an adverb describing the verb "corrupt". Corruption therefore is established by examining the corrupt act conduct or behavior. It does not have fixed essential elements in that its form or structure mutates.

In casu, the element of corruption is to be examined in terms of the deceitful non-disclosure. This necessarily takes one to the presumption in s173 (3) *supra*. It cannot be denied that a deceitful person is a dishonest person and a deceitful act is a dishonest act. Dishonest conduct or act is an element of corruption. Both appellants were respondent's agents. They carried out 24 transactions in connection with the respondent's affairs or business. They denied failing to disclose to the principal a personal interest in the transactions. Finally, they denied that they intended to deceive the principal. It appears to me that once all these essential elements are proved beyond a reasonable doubt, then the element of "corruption" will have been established because the Act says that as soon as these facts are proved, the accused shall be guilty of corruptly concealing a transaction. Accordingly, the court *a quo* did not misdirect itself when it concluded that the appellants were guilty of "corruptly" concealing a transaction from the respondent.

The other facet of the complaint disclosed in the 3rd ground of appeal is that the court *a quo* inappropriately invoked the presumption as provided in s173 (3) when it stated in its judgment that;

> "It appears to this court, that by this stage of the State evidence, the presumption of guilt operated against both accused persons …"

Emphasis was placed on the phrase "presumption of guilt" to demonstrate that the court *a quo* had wrongly placed the "entire onus" on the accused. It was argued that the above quotation supports this. I disagree. In fact the full quotation reads like this;

> "It appeared to this court, that by that stage of the state evidence, the presumption of guilt operated against both accused persons so that unless the contrary is proved by the accused persons, it will be presumed that they

did not disclose their personal interest intending to deceive their principal …" See page 20 of the record.

In my view, the above extract from the court *a quo's* judgment shows that the court was clearly appreciative of the full import of the presumption despite the nomenclature. I must state that the court *a quo's* judgment was not elegantly written in certain parts. However, the following passage also proves that the court *a quo* properly invoked the presumption. The court expressed itself thus;

"The totality of the evidence on this record of the proceedings, is such that both accused persons did not disclose their personal interest in Netabelt Investments, corruptly so, with intention to deceive their principal (the MSU) in the 24 transactions engaged in here. The accused could not discharge the reversed onus on them, to disprove the allegation …" (emphasis added)

Elsewhere in its judgment, the court *a quo* listed factors showing that Netabelt Investments received preferential treatment in that it was always paid promptly (within 9 days of date of invoice) while other creditors where made to wait for up to 3 months. Further, the 24 invoices from Netabelt were in sequential order suggesting that the MSU was its sole answer. See pages 18 – 19 of the record. For these reasons, I take the view that the court *a quo* properly invoked the presumption to assess the evidence with a view to decide on whether or not the element of intention had been proved.

The last aspect raised in paragraph (b) of the 3rd ground of appeal namely that the court *a quo* "failed to make the legal distinction between a juristic person and its actions and those of the appellants" has no merit as it is a clear afterthought. No wonder why it was not argued in the heads of argument. In any event, I take the view that in the circumstances of this case that question does not even begin to apply. The appellants "carried out" the transactions as contemplated by the section. This is common cause.

As regards the 4th ground of appeal, it is my view that it amounts to a mixed grill in that it comprises many components. On one hand the contention is that the presumption of evidence as provided for in s173 (3) *supra* is inconsistent with s70 of the Constitution of Zimbabwe Amendment (No 20) Act 2013. This section protects the presumption of innocence in criminal trials. The precise point raised here is that under the new constitutional dispensation, the shifting of the onus to

an accused to prove his innocence violates the right to be presumed innocent until proven guilty.

On the other hand, there is a shadowy submission that the appellants did discharge the reverse onus. Further, it was finally under this ground submitted that to invoke s173 (3) like what the court *a quo* did violated the appellants' right to silence enshrined in section 70 (1) (i) of the Constitution. It was argued that it would be impossible to invoke the reverse onus without compelling an accused to testify in his defence or to "literally incriminate himself" and thereby convict himself.

The record of proceedings does not indicate that the constitutionality of the reverse onus provisions was ever raised. I could not find it in the defence closing submissions. Neither is it in the judgment of the court *a quo*, While it is permissible to raise a question of law for the 1st time at any stage, with constitutional challenges, there is a special procedure provided for in s175 (4) of the Constitution. The issue was never raised and no request for referral was made by the appellants. In the circumstances I do not think it appropriate for this court to simply declare that section 173 (3) of the Code is unconstitutional without the benefit of argument. All I can say is that the "reverse onus" principle is part of our law. In the context of criminal law a reverse onus has as its broad objective the effective prosecution of crime especially where it has been "shown that there is a social need for the effective prosecution of the category of offence to which it applies". See P. J. Schwikraad S. E. Van Der Merwe, *Principles of Evidence*, Fourth Edition Juta 2015 at p 558. See also *S* v *Zuma & Ors* 1915 (1) ACR 568 (SC); *S* v *Coatzee & Ors* 1997 (3) SA 527 (CC).

For that reason, there are a number of factors that must be taken into consideration before such a provision in a statute can be declared unconstitutional. This court, sitting as an appellate court cannot in our view declare a statutory provision unconstitutional based on submissions by counsel for the appellants. In the result this ground of appeal is dismissed.

It was further argued under that ground that in any event the appellants discharged the reverse onus on them by giving plausible explanations which the court *a quo* found to be possibly true. Reliance was placed on a quotation from the court *a quo's* judgment at page 21 of the record wherein the court said "yes the explanation given by the two accused persons is possibly true but not in the least probable" and not the other way round for that is the test against which the accused's defence must be measured in criminal proceedings.".

The point to be noted is that the court *a quo* conducted a two stage inquiry in its reasoning. The 1st stage involved the specific finding that the appellants failed to disclose their interest to the respondent in the 24 transactions. It also found that the 2 accomplices were credible witnesses. The appellants' defence of a conspiracy involving the Council Chairperson was dismissed as an afterthought. The court *a quo* made a finding that the state had established all the essential elements constituting the *actus reas* of the offence.

The second rung of the inquiry involved the invocation of the presumption in s173 (3). It is trite that an accused burdened with a reverse onus must establish it on a "balance of probabilities". See *S* v *Zuma & Ors supra* and *S* v *Manamela & Ano (Director General of Justice intervening)* 2000 (1) SACR (414 (CC). Section 173 (3) imposes an evidentiary burden on the appellants. Such an evidentiary burden merely requires evidence sufficient to give rise to a reasonable doubt to prevent conviction.

In casu, it is in this sense that the court *a quo* used the phrase "… least probable". The State was able to bring the appellants within the ambit of the statute. The presumption does not place the entire onus on the appellants. Therefore the court *a quo* used the proper tests to assess the evidence proffered by the State and the appellants. In the result we find no merit in this ground and it is hereby dismissed.

The 5th ground relates to the credibility findings made by the court a quo in respect of the two accomplice witnesses who were said to had, "a motive to exaggerate". These credibility findings were described as unfathomable and gratuitous. The basis of this criticism was that the court *a quo* did not record the warning it administered to the accomplice witnesses. Secondly it was contended that the court a quo did not demonstrate that it exercised any caution in assessing the evidence of the accomplices. Reliance was placed on *S* v *Savanna Konda* 1956 R & N 463 (SR) for the proper form of a warning and *S* v *Ngara* 1987 (1) ZLR 91 (SC) for the need to observe special conditions when evaluating the credibility of an accomplice.

In the present matter, the court was fully aware that it was dealing with accomplice witnesses. These witnesses were warned by the court. The court then made specific credibility findings and concluded that it believed the two accomplice witnesses. In my view, apart from the non-elegance of the language used by the court *a quo*, there is no misdirection that requires the upsetting of the court a quo's findings. On the evidence on record, those findings are unassailable.

Even the defence did not point out any contradictions or inconsistences in the accomplice witnesses' testimony. It is trite that issues of credibility lie in the domain of the trial court.

While we agree that the language used by the court *a quo* tends to cloud its reasoning, it is our view that not every error or misdirection vitiates a conviction. The question to be asked is; do all facts taken together prove guilt beyond a reasonable doubt? An appellant court must therefore be satisfied either that the accused's guilt was proven or was not proven looking at the totality of the evidence in the court record.

This accords with the provisions of section 38 (2) of the High Court Act (Chapter ……) which states;

> "38 (2) Notwithstanding that the High Court is of the opinion that any point might be decided in favour of the appellant, no conviction or sentence shall be set aside or altered unless the High Court considers that a substantial miscarriage of justice actually occurred.
>
> (4) If any point raised is decided in favour of the appellant and it consists of a misdirection by the trial court or tribunal of itself on a question of law or a question of fact or a question of mixed law and fact, the High Court shall dismiss the appeal if it is satisfied that the evidence which has to be considered has not been substantially affected by the misdirection and that the conviction is justified having regard to the evidence." (the underlining is mine)

In casu we are satisfied that the evidence led by the State proved the appellants' guilt beyond a reasonable doubt.

As regards the 6th ground of appeal it was never suggested to the MSU Registrar during cross-examination. What came out clearly is that disclosure was required in terms of section 5.62 of MSU Financial Regulation which the 1st appellant helped to draft. The section states;

> "Any member of staff who has a connection with any outside organization which sells or buys to/from the University, must declare their interest in writing to the Registrar and should not under any circumstances be the person who witnesses any transaction between the University and that organization". (my emphasis).

Quite clearly a declaration is not made by supplying CRS 6 and 14 to the Procurement Manager or by filing declaration of interest forms to the same manager. The argument that although the Financial Regulations required one to declare in the manner it states, in practice this procedure was not being followed does not help the 1st appellant who occupied such a senior position in the management structure of the MSU.

This ground has no merit. Accordingly it is dismissed.

Ground number seven has been split into seven paragraphs some of which are irrelevant. In paragraph (a) and (b) thereof that the appellants allege that the court *a quo* ignored or failed to "appreciate" the acrimonious relationship with the Council Chairman, and the State's failure to call the Council Chairman to rebut the appellants' defence. The conspiracy theory was denied by the two witnesses. They were categoric in refuting their alleged association with the Council Chairperson. As for the court *a quo* it had this to say about the conspiracy against the appellants;

> "The two accomplice witnesses refuted the defence's claims and said they had just decided to make a clean breast of the purported declarations matter. They refuted that it was after accused 1's rumoured relationship with Netabelt and possible investigations thereof that accused 1 had pleaded with them and or coerced them to witness (Setanda) and receive (Mazwi) the retrospectively dated Declaration of Interests …" See judgment page 7.

Further on page 8 of its judgment the court *a quo* concluded as follows;

> "The defence claim that the 2 witnesses (Setanda and Mazwi) were conniving with MSU Council Chairman who once upon a time clashed with the Bursar – accused 1 about some Harare Lecturers' non-remittance of PAYEs, from MSU salaries <u>was found to be farfetched by the court.</u> There was no rational connection between the 2 issues (i.e. alleged non-disclosure of interest and the Harare Lecturers' non-remittance of PAYE)". (my emphasis)

From the above, it is clear that the court *a quo* was alive to these issues.

Paragraphs (c) and (d) of the seventh ground of appeal relate to "Audit Findings" that are not contained in the Audit Report exhibit 5 under

"Conclusion". See page 6 at page 23 of the Audit Report and page 222 of the record of proceedings. In any event there is nothing called "partial disclosure". For those reasons they do not deserve any further comment and are hereby dismissed.

As regards paragraphs (e), (f) and (g) they are totally irrelevant to the issues before the court *a quo*. The evidence of the MSU Registrar one F. Mupfiga and that of the Auditor one Isaac Muparusa Tawanda is clear on what the complainant was not happy about and the audit findings.

Ground of appeal number 8 is a generalized statement meant to crystalize all the grounds raised in this appeal. The 9th and final ground of appeal attacks the court a quo's conclusion that;

> "However, the case precedents both counsel referred to in their addresses did not seem to be applicable in the matter before this court".

The court was commenting on the closing submissions by both parties. We do not find any misdirection in this conclusion in that the court was merely indicating that some of the cases cited were distinguishable or inapplicable.

All in all we find the 9 grounds of appeal unmerited.

In the circumstances, the appeal is dismissed.

Moyo J ……. I agree